

1 Hon. Richard A. Jones, District Judge
2 Hon. J. Richard Creatura, Magistrate Judge
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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON

9 Ian Simmers,

10 Case No. 2:21 CV 100

11 Plaintiff,

12 Note on motion calendar:
13 August 13, 2021

14 v.

15 King County, the City of Bothell, Det.
16 Edward J. Hopkins, Sgt. Clement Rusk,
17 Det. Rebecca Miner, Det. John McSwain
18 Det. Pat Raftus, Det. Ken Baxter, Chief
19 Mark Ericks, Det. Sgt. David Schlaegel,
20 Maj. Jackson Beard, Unknown Officers of
21 the City of Bothell Police Department, and
22 Unknown Sheriff's Deputies of King
23 County,

24 Defendants.

25 **PLAINTIFF'S RESPONSE TO RULE 72 OBJECTIONS
26 FILED BY THE CITY OF BOTHELL DEFENDANTS**

27 Plaintiff Ian Simmers, through his undersigned attorneys, submits the following
28 response to the Rule 72 Objections filed by the City of Bothell Defendants (Dkt. 56), stating
29 as follows:

30 **Introduction**

31 Plaintiff Ian Simmers was wrongfully convicted of a murder he did not commit, and
32 he served 23 years in prison before his conviction was overturned and the charges were
33 dropped in light of exculpatory DNA testing. He now brings this suit pursuant to 42 U.S.C.
34 § 1983 seeking vindication of the violations of his constitutional rights by the law

1 enforcement officers, and their municipal employers, who were responsible for his injuries.
 2 Despite Defendants' attempts to portray this case as simply a re-hash of the criminal
 3 proceedings, the Complaint alleges intentional misconduct by Defendants in violation of
 4 Plaintiff's constitutional rights.

5 The Magistrate Judge properly concluded that the bulk of Defendants' arguments for
 6 dismissal fail. Indeed, in their Rule 72 objections, the City of Bothell Defendants misapply
 7 the governing law and misconstrue the Complaint's factual allegations. Defendants'
 8 objections do not meaningfully respond to either Plaintiff's arguments or to the Magistrate
 9 Judge's ruling. Because the Defendants' objections flout the proper standard of review at the
 10 Rule 12 stage and fail to identify a legal basis to dismiss the Complaint, they should be
 11 overruled.

12 Because the objections filed by the City Defendants (Dkt. 56) and those filed by
 13 Defendant King County (Dkt. 57) raise nearly all the same arguments, Plaintiff has addressed
 14 each argument just once across two responsive filings to avoid redundancy. This brief
 15 addresses the arguments concerning judicial estoppel and Plaintiff's Article III standing.
 16 Defendants' arguments relating to collateral estoppel and the statute of limitations for
 17 Plaintiff's state-law malicious prosecution claim are discussed in Plaintiff's response to the
 18 City Defendants' objections. In addition, this brief discusses the City Defendants' arguments
 19 concerning the sufficiency of Plaintiff's allegations under Rule 12(b)(6).

20 **Background**

21 The following factual summary is drawn from the allegations in Plaintiff's Complaint.
 22 See *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) ("We must accept all factual
 23 allegations in the complaint as true and construe them in the light most favorable to the non-
 24 moving party.").

25 Plaintiff brought this suit to vindicate the violations of his federal constitutional rights
 26 that caused him to be wrongly convicted and imprisoned for 23 years before DNA evidence
 27 finally proved his innocence. Compl., Dkt. 1 ¶¶1, 6–7. Plaintiff's wrongful conviction was

1 the direct result of deliberate misconduct on the part of law enforcement officers employed
 2 by Defendants King County and the City of Bothell, who fabricated evidence and suppressed
 3 exculpatory evidence in an effort to secure his detention and conviction for a crime they knew
 4 he did not commit. *Id.* ¶¶2–5. But his wrongful conviction also resulted from the policies,
 5 practices, and customs of King County and the City of Bothell, as well as the actions of those
 6 entities’ official policymakers. *Id.* ¶¶167–180.

7 **A. The Gochanaur Murder & Defendants’ Unlawful Interrogations**

8 The crime for which Plaintiff was wrongly convicted was the 1995 murder of Rodney
 9 Gochanaur. *Id.* ¶1. Officers from the Bothell Police Department, including Defendants
 10 Hopkins, Schlaegel, Miner, and Rusk, participated in the initial investigation and uncovered
 11 potential suspects with motives for the murder. *Id.* ¶¶22, 27–28. But rather than conducting
 12 adequate follow-up on these leads to identify the real killer, these Defendants (working in
 13 conjunction with Defendants McSwain, Raftis, Baxter, and Rusk from the King County
 14 Police) decided to pin the crime on Plaintiff. *Id.* ¶¶29–31. Defendants Ericks and Beard,
 15 acting in their capacities as supervisors and policymakers within the Bothell Police
 16 Department and King County Police, respectively, condoned these actions. *Id.* ¶32.

17 At the time of the Gochanaur murder, Plaintiff was just 16 years old. *Id.* ¶1. He was
 18 arrested several days after the murder on completely unrelated charges alongside another
 19 juvenile named Jon Wyatt. *Id.* ¶¶34–35. The Police Officer Defendants (i.e., Schlaegel,
 20 Hopkins, Miner, McSwain, Raftis, Baxter, and Rusk) began interrogating Wyatt without his
 21 parents present. *Id.* ¶37. The Police Officer Defendants employed a variety of coercive
 22 interrogation tactics to obtain false statements implicating Plaintiff in the Gochanaur murder.
 23 These tactics included threatening, pressuring, cajoling, badgering, and harassing Wyatt in
 24 an effort to get him to falsely state that Plaintiff had something to do with the crime, *id.* ¶40;
 25 using guilt-presumptive questioning, *id.* ¶41; depriving Wyatt of an attorney even after one
 26 was requested and arrived at the police station, *id.* ¶¶41, 57; and making false promises of
 27 leniency that also operated as coercive threats, *id.* ¶¶42, 44. The Police Officer Defendants

1 deliberately used these tactics because they knew they would be effective in obtaining false
 2 statements implicating Plaintiff. *Id.* ¶¶38, 43, 45. The Police Officer Defendants then
 3 fabricated evidence, including written reports, about their interrogations of Wyatt. *Id.* ¶46.
 4 And they failed to document or disclose exculpatory and impeaching evidence relating to
 5 their interactions with Wyatt. *Id.* ¶¶96–97.

6 With Wyatt’s fabricated statements in hand, the Police Officer Defendants turned to
 7 their interrogation of Plaintiff, employing tactics similar to those that had proven effective
 8 against Wyatt. *Id.* ¶48. The Police Officer Defendants ignored Plaintiff’s invocation of the
 9 right to silence, *id.* ¶¶52–53, and harassed him throughout the night in an effort to deprive
 10 him of sleep and make him more compliant during his interrogations, *id.* ¶¶54, 57, 60, 63–
 11 64. Even after it became clear that Plaintiff had no knowledge of the crime and was innocent,
 12 the Police Officer Defendants persisted in their coercive strategy. *Id.* ¶¶65, 68. They used
 13 aggressive confrontation, false evidence ploys, and minimization themes, such as convincing
 14 Plaintiff to adopt a story that Gochanaur was the initial aggressor in order to minimize the
 15 severity of this crime. *Id.* ¶65. The Police Officer Defendants also fed Plaintiff details about
 16 the crime as part of their effort to fabricate a false statement, coaching Plaintiff to repeat
 17 certain information. *Id.* ¶¶68–69.¹

18 Plaintiff was particularly vulnerable to the Police Officer Defendants’ coercive
 19 tactics, and Defendants knew as much. *Id.* ¶66. The Police Officer Defendants understood
 20 that Plaintiff’s judgment was impaired, that he was exhausted, and that he was a juvenile, all
 21 of which facilitated their strategy to obtain a false confession. *Id.* ¶¶62–63. Eventually, the
 22 Police Officer Defendants succeeded in overbearing Plaintiff’s will and coercing him into
 23 repeated the inculpatory statement they had manufactured. *Id.* ¶69. They deliberately waited
 24 until that point to begin recording their questioning of Plaintiff, thereby creating false
 25 evidence that would be used to detain, prosecute, and convict him. *Id.* ¶¶70, 86, 89.

26
 27 ¹ The City Defendants offer self-serving, unsupported, “factual” recitation that flatly contradicts the allegations
 in the Complaint. *See, e.g.*, Dkt. 56 at 2:11-14.

1 **B. Defendants' Fabricated "Informant" Testimony**

2 This fabricated statement was not the end of Defendants' misconduct. The confession
 3 that the Police Officer Defendants ascribed to Plaintiff was riddled with flaws suggesting it
 4 was false. *Id.* ¶¶90–93. To shore up these flaws, the Police Officer Defendants conspired to
 5 convince a man named Kevin Olsen to testify to a false story that Plaintiff confessed to the
 6 murder while in jail. *Id.* ¶94. Defendant Hopkins then memorialized this fabricated evidence
 7 in a police report designed to explain away the mistakes in the false confession. *Id.* ¶95.

8 **C. Plaintiff's Trial, Conviction, and Eventual Exoneration**

9 Defendants' coercion, fabrication, and suppression had their intended effect. *Id.* ¶99.
 10 Plaintiff was charged with Gochanaur's murder and tried based solely on fabricated evidence.
 11 *Id.* ¶100. As a direct result of Defendants' misconduct, Plaintiff was sentenced to nearly 50
 12 years in prison. *Id.* At no point during the criminal investigation or trial was there probable
 13 cause to believe that Plaintiff was guilty, as the sum total of the evidence amassed against
 14 him was the result of coercion and fabrication. *Id.* ¶98.

15 Plaintiff served almost 23 years in prison as an innocent man, suffering incalculable
 16 physical, mental, emotional, and economic harm. *Id.* ¶¶111, 114–120. In 2018, he filed a
 17 motion to vacate his conviction based in part on the results of newly performed DNA testing
 18 on the murder weapon and the victim's fingernail clippings. *Id.* ¶112. The DNA test results
 19 conclusively proved his innocence. *Id.* The King County Prosecutor's office joined the
 20 motion to vacate the conviction, which was vacated in 2019, and the charges against Plaintiff
 21 were dismissed. *Id.* ¶113.

22 **D. Defendants' Rule 12 Motions**

23 Plaintiff filed suit on January 27, 2021. Dkt. 1. The Defendants moved for judgment
 24 on the pleadings under Rule 12(c), and on July 12, 2021, the Magistrate Judge issued a report
 25 and recommendation to deny the motions except as to two sets of claims: those based on the
 26 coerced confession and the state-law claims other than malicious prosecution. Dkt. 53 at 1–
 27 3. Defendants filed objections to the report and recommendation pursuant to Rule 72. Dkt.

1 56 (City Defendants' objections); Dkt. 57 (County's objections); Dkt. 58 (Individual County
 2 Defendants' objections). For the reasons explained below, these objections should be
 3 overruled.

4 **Argument**

5 **A. Judicial estoppel does not apply**

6 Defendants contend that Plaintiff's claims should be deemed barred under the
 7 doctrine of judicial estoppel. Specifically, they argue one of Plaintiff's arguments in support
 8 of a motion filed during his 2019 post-conviction proceedings conflicts with the allegations
 9 in the Complaint, and that his claims regarding his coerced confession should therefore be
 10 dismissed. *See* Dkt. 56 at 8-9; Dkt. 57 at 9-10. This argument fails because it raises factual
 11 disputes about materials outside the Complaint, but even assuming those factual issues could
 12 be considered, Defendants mischaracterize Plaintiff's arguments during his postconviction
 13 case and posit a conflict where none exists.

14 "Judicial estoppel is an equitable doctrine invoked by a court at its discretion." *United*
 15 *States v. Ibrahim*, 522 F.3d 1003, 1009 (9th Cir. 2008). Three factors guide the determination
 16 of whether judicial estoppel might apply: "(1) whether a party's later position is clearly
 17 inconsistent with its original position; (2) whether the party has successfully persuaded the
 18 court of the earlier position; and (3) whether allowing the inconsistent position would allow
 19 the party to derive an unfair advantage or impose an unfair detriment on the opposing party."

20 *Id.* (quotation marks omitted).

21 Defendants' judicial-estoppel argument relies on a motion filed by defense attorneys
 22 on Simmers's behalf in February 2019 seeking relief from his judgment of conviction. *See*
 23 Dkt. 30 at 753–66. A criminal defendant may obtain relief from a judgment only for
 24 enumerated reasons, including "[n]ewly discovered evidence which by due diligence could
 25 not have been discovered in time to move for a new trial under rule 7.5." CrR. 7.8(b). As a
 26 matter of law, therefore, defense counsel was required to cite newly discovered evidence that
 27 warranted vacating his conviction. Plaintiff cited the recent DNA testing excluding him from

1 the mixture of the DNA on the murder weapon and from the fingernail scrapings of the
 2 victim. Dkt. 30 at 766. Plaintiff also cited scientific research into adolescent brain
 3 development, which has worked a sea change in other areas of the law, as in ending
 4 mandatory life sentences for juveniles under *Miller v. Alabama*, 567 U.S. 460 (2012). *See*
 5 Dkt. 30 at 761-62. Science also shows that juveniles are far more likely to provide false
 6 confessions than adults. *Id.* at 762-64. With the benefit of this corpus of research, alongside
 7 the DNA evidence, Plaintiff's defense counsel asked that the conviction be vacated.

8 Though this is a new body of science, the legal basis of Plaintiff's claims that
 9 Defendants' interrogation was unconstitutional is old and well-established. As a matter of
 10 law, the Supreme Court has long mandated that juveniles be treated differently than adults
 11 when it comes to their treatment in interrogations. *See Haley v. Ohio*, 332 U.S. 596, 599
 12 (1948) (holding that special care must be taken when interrogating juveniles); *In re Gault*,
 13 387 U.S. 1, 55 (1967) (holding that, for juveniles, "the greatest care must be taken to assure
 14 that [any] admission was voluntary, in the sense not only that it was not coerced or suggested,
 15 but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or
 16 despair"); *see also Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).

17 The problem with Defendants' argument is that the two positions they claim are in
 18 conflict are perfectly consistent. During Plaintiff's post-conviction case, his counsel argued
 19 that the science of adolescent brain development and false confessions had advanced since
 20 his original trial in 1995. This evidence would be relevant to a jury considering what weight,
 21 if any, to give the confession, even if it were not suppressed. In this civil lawsuit, the *legal*
 22 claims against the Defendants allege that the interrogation of Plaintiff was unlawful under
 23 established cases like *Haley*, *Gault*, and *Gallegos*. While the scientific research, coupled with
 24 the new DNA evidence, may bear upon the jury's evaluation of the evidence in this case,
 25 there is no inconsistency in arguing that the Defendants violated Plaintiff's constitutional
 26 rights during an unlawful interrogation, leading to an involuntary inculpatory statement,
 27

1 while also maintaining that new social science sheds light on how someone might confess to
 2 a crime they did not commit.²

3 As a result, the Complaint and the post-conviction pleading are consistent. The
 4 Complaint alleges deliberate misconduct (which was already unlawful at the time of the
 5 interrogation) beyond the scope of the post-conviction motion, and addresses the entirety of
 6 the lengthy questioning and other acts that culminated in a false recorded statement. By
 7 contrast, the post-conviction motion (1) focused on just one aspect of the interrogation (the
 8 recorded portion), and (2) presented new scientific evidence that would warrant a
 9 reevaluation of the trial evidence, regardless of whether the statement was lawful or not. The
 10 additional allegations in the Complaint were not part of the post-conviction motion because
 11 they did not constitute a basis for relief under the statute, and they in no way conflict with the
 12 allegations of deliberate misconduct in this case.³

13 The City Defendants incorrectly suggest that the post-conviction motion argued that
 14 the police officers who coerced the confession only ever used interrogation techniques that
 15 were considered standard and widely accepted at the time.⁴ This, of course, is not what the
 16 motion argued at all. Instead, the motion cited scientific evidence for the general proposition
 17 that “standard psychological interrogation tactics, especially when used on youthful suspects,
 18 could produce false confessions.” Dkt. 30 at 762. That general claim says nothing about the

19 ² To be sure, as in other cases, Plaintiff will likely retain an expert to shed light on related scientific issues as it
 20 relates to the phenomenon of false confessions—which are counterintuitive to average jurors who may believe
 21 that someone could not falsely confess unless they were subject to extreme conduct like torture—as they assess
 22 the legal question of whether Defendants’ actions were constitutional. *See, e.g., Andersen v. City of Chicago*,
 23 No. 16 C 1963, 2020 WL 1848081, at *3 (N.D. Ill. Apr. 13, 2020) (admitting expert testimony concerning false
 24 confessions); *Caine v. Burge*, 2013 WL 1966381 (N.D. Ill. May 10, 2013) (same); *Livers v. Schenck*, 2013 WL
 25 5676881, at *4 (D. Neb. Oct 18, 2013) (same); *Crowe v. San Diego*, 608 F.3d 406, 431-32 (9th Cir. 2010)
 (reviewing case where false confessions expert was admitted).

26 ³ Indeed, that is why both Plaintiff’s Complaint and his post-conviction motion allege that the Police Officer
 27 Defendants used techniques (like “the Reid technique”) that are known to produce false confessions when used
 28 against juveniles. Compl., Dkt. 1 ¶¶59–66 (alleging, *inter alia*, the use of “aggressive confrontation, false
 29 evidence ploys, and minimization themes”). If these allegations were in direct conflict as Defendants claim,
 30 they would not appear together in the Complaint.

31 ⁴ The City Defendants come close to misrepresenting the record when they repeatedly put “widely accepted” in
 32 quotation marks, implying that Plaintiff used that phrase in his post-conviction motion. *See* Dkt. 56 at 8. He did
 33 not. *See generally* Dkt. 30 at 753-67.

1 particular misconduct in Plaintiff's case, and it certainly does not contradict the proposition
 2 that the Defendants engaged in willful misconduct considered unconstitutional by the
 3 governing legal standards of the day.⁵

4 Finally, the Magistrate Judge correctly concluded that Defendants cannot show that
 5 the criminal court vacated the conviction because it found that the police acted in good faith.
 6 Dkt. 53 at 24. Beyond the fact that Plaintiff did not argue or contend that the police had in
 7 fact acted in good faith, other facts—such as the new DNA testing showing that Plaintiff's
 8 confession was false or the State's decision to concede the merits of the motion—supported
 9 vacatur.⁶ *Id.*; *see also* Dkt. 30 at 766. As the Magistrate Judge recognized, the order vacating
 10 the conviction is devoid of any explanation, *see id.* at 836, and there is no basis to conclude
 11 that the order depends in any way on a finding that the Defendants' conduct was lawful.
 12 Indeed, because the State did not oppose the motion, there was no reason for the court to
 13 assess the underlying evidence; there was no controversy or dispute for the court to resolve.
 14 Judicial estoppel cannot possibly apply here.

15 **B. Plaintiff has standing to assert all of his claims**

16 Defendants have chosen to revive an argument about Plaintiff's standing to bring
 17 claims that he has now repeatedly confirmed he is not bringing. The Magistrate Judge
 18 appropriately dispensed with this argument in summary fashion, explaining that Plaintiff's
 19 allegations concerning Jon Wyatt "are circumstantial evidence that support his other claims,"
 20 and thus "none of plaintiff's claims should be dismissed on the basis of lack of standing."

21

22 ⁵ Under these circumstances, if the Court were to adopt Defendants' judicial estoppel argument, it would be the
 23 equivalent of holding that criminal defendants-turned-plaintiffs can raise only the arguments that were presented
 24 to the criminal court in post-conviction litigation, regardless of the completely different legal standards that
 25 govern those proceedings. And the Supreme Court has clearly held that section 1983 does not require plaintiffs
 to exhaust remedies in this way. *Heck v. Humphrey*, 512 U.S. 477, 480 (1994) ("In general, exhaustion of state
 remedies is not a prerequisite to an action under § 1983."); *see also Knick v. Twp. of Scott*, 139 S. Ct. 2162,
 2167 (2019) (describing this as "the settled rule").

26 ⁶ The City Defendants contend that this DNA testing was not presented to the court as "newly discovered
 27 evidence" that could warrant vacating the conviction. Dkt. 56 at 8-9. This is a self-serving and narrow
 interpretation of the record, *see* Dkt. 30 at 766, that is improper at this stage, *see Lee v. City of Los Angeles*, 250
 F.3d 668, 688 (9th Cir. 2001).

1 Dkt. 53 at 24. This is because a plaintiff can prove a fabrication claim using circumstantial
 2 evidence, either by pointing to evidence that the defendants engaged in fabrication despite
 3 the fact they knew or should have known Plaintiff was innocent, or by showing that officers
 4 used abusive or coercive techniques they knew or should have known would yield false
 5 information. *Spencer v. Peters*, 857 F.3d 789, 793 (9th Cir. 2017); *Costanich v. Dep’t of Soc.*
 6 & *Health Servs.*, 627 F.3d 1101, 1111 (9th Cir. 2010); *Devereaux v. Abbey*, 263 F.3d 1070,
 7 1074–75 (9th Cir. 2001) (en banc)). Circumstantial or indirect evidence of fabrication relates
 8 primarily to third-party evidence—for example, as in *Devereaux*, where the police questioned
 9 third parties in a manner that would result in false accusations. *Devereaux*, 263 F.3d at 1077.
 10 Plaintiff’s allegations concerning Wyatt fall squarely within *Devereaux*.

11 In addition to being a part of Plaintiff’s fabrication claim, the allegations related to
 12 Wyatt illustrate the Defendants’ course of conduct during the Gochanaur homicide
 13 investigation; provides necessary context for their coercive interrogation of Plaintiff; shows
 14 that Defendants suppressed exculpatory evidence pertaining to their interactions with Wyatt,
 15 which then affected Plaintiff’s criminal case; constitutes an affirmative act in furtherance of
 16 the conspiracy to deprive Plaintiff of his constitutional rights; constitutes evidence that will
 17 impeach Defendants’ anticipated testimony about the course of the criminal investigation;
 18 and demonstrates the lack of appropriate policies, procedures, discipline, supervision, and
 19 oversight within King County and the City of Bothell regarding the interrogation of juvenile
 20 suspects. The allegations relating to Wyatt are therefore directly relevant to Plaintiff’s claims
 21 that are personal to him and present no issue of Article III standing.

22 **C. Plaintiff has stated claims against each of the individual City of Bothell
 23 Defendants by alleging their misconduct with particularity**

24 Finally, the City Defendants contend that Plaintiff failed to meet the standard of Rule
 25 12(b)(6) by engaging in supposed “group pleading.”⁷ Dkt. 56 at 11-12. This argument fails
 26 for two reasons. First, the same allegation explicitly directed at a group of defendants is

27 ⁷ In their objections, Defendants do not challenge the sufficiency of Plaintiff’s *Monell* allegations, which easily
 meet the Rule 12 pleading standard. See Dkt. 53 at 25-27 (concluding that Plaintiff sufficiently pleaded
 ratification and policy-and-practice theories of *Monell* liability).

1 sufficient to plead personal involvement after *Iqbal*, even if each defendant comprising the
 2 group is not named individually in each separate paragraph. *United States v. United*
 3 *Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016) (holding under Rule 9(b) that
 4 “[t]here is no flaw in a pleading . . . where collective allegations are used to describe the
 5 actions of multiple defendants who are alleged to have engaged in precisely the same
 6 conduct”); *United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 681 (9th Cir.
 7 2018) (“If a group pleading against similarly situated defendants can satisfy Rule 9(b), then
 8 it can also satisfy the lesser notice pleading standard of Rule 8.”). District courts thus
 9 routinely reject such “group pleading” objections by defendants. *See Tivoli LLC v. Sankey*,
 10 No. SA CV 14-1285-DOC, 2015 WL 12683801, at *3 (C.D. Cal. Feb. 3, 2015); *Munning v.*
 11 *Gap, Inc.*, No. 16-cv-3804-TEH, 2016 WL 6393550, at *3 (N.D. Cal. Oct. 28, 2016); *DeSoto*
 12 *Cab Co. v. Uber Techs., Inc.*, No. 16-cv-63845-JSW, 2018 WL 10247483, at *15 (N.D. Cal.
 13 Sept. 24, 2018).

14 Second, beyond his allegations that apply to the Police Officer Defendants as a whole,
 15 Plaintiff has alleged particular misconduct by each of the Individual City Defendants.
 16 Defendant Hopkins centrally participated in the deliberate coercion of Plaintiff, the
 17 fabrication of evidence against him, and the suppression of exculpatory evidence that would
 18 have proven his innocence of the Gochanaur murder. Hopkins, along with Defendant Rusk,
 19 led the coercive interrogation and knowingly fabricated the false confession that Defendants
 20 attributed to Plaintiff. Compl., Dkt. 1 ¶¶61–99; 102.

21 Defendant Miner participated in the misconduct that produced Plaintiff’s wrongful
 22 conviction. As an officer with the Bothell Police Department investigating the Gochanaur
 23 murder, Miner helped make the decision to pin the crime on Plaintiff rather than conduct a
 24 legitimate investigation. *Id.* ¶¶ 22, 27, 29. Moreover, she was aware of Plaintiff’s unlawful
 25 interrogation and the steps taken to fabricate the confession that was attributed to him, but
 26 did nothing to intervene to stop the violations of Plaintiff’s constitutional rights. *Id.* ¶¶48, 65.
 27 In addition, as the Magistrate Judge found, Plaintiff has alleged that Miner was an “integral

1 participant” in the overall pattern of misconduct. *See* Dkt. 53 at 28–29; *see also Keates v.*
 2 *Koile*, 883 F.3d 1228, 1241–42 (9th Cir. 2018). Because Miner “participated in a meaningful
 3 way in a collective decision” to take an action that “was central to the alleged constitutional
 4 violation,” *id.* at 1242, Plaintiff has alleged that she is liable as an integral participant.

5 Defendant Ericks, who was Chief of the Bothell Police Department during the
 6 Gochanaur homicide investigation affirmatively ratified the misconduct of the other Police
 7 Officer Defendants in his capacity as a policymaker for the City of Bothell. Ericks was not
 8 only aware of the wrongdoing perpetrated by the Police Officer Defendants, but made an
 9 affirmative and conscious choice to ratify that wrongdoing by proceeding with Plaintiff’s
 10 detention and prosecution and by approving of the Defendants’ reports, notes, actions, and
 11 investigative methods despite their obvious flaws. Compl., Dkt. 1 ¶¶12, 32, 101, 176.

12 With respect to Defendant Schlaegel, Plaintiff alleges that he directly participated in
 13 the unconstitutional misconduct that caused Plaintiff’s wrongful conviction. For example,
 14 Schlaegel knowingly authored a false police report contending that Plaintiff was
 15 “sociopathic” and “claims gang membership in order to prolong Plaintiff’s incarceration. *Id.*
 16 ¶84. Schlaegel also actively conspired to fabricate false statements from an informant, then
 17 suppressed exculpatory evidence relating to that informant. *Id.* ¶94.

18 The City Defendants do not address these particularized allegations in their Rule 72
 19 Objections, and their argument that the Complaint is somehow deficient is so minimal and
 20 conclusory it should be deemed waived. *See* Dkt. 56 at 11–12 (failing to cite a single
 21 paragraph of the Complaint); *Edwards v. Venma Nutrition*, 835 F. App’x 174, 175 (9th Cir.
 22 2020) (failure “to present a specific, cogent argument” amounts to waiver) (citing *Greenwood*
 23 *v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994)).

24 Conclusion

25 For the foregoing reasons and the reasons set forth in Plaintiff’s response to the
 26 County’s Rule 72 Objections, Plaintiff respectfully requests that the Court overrule the Rule
 27 72 Objections by the City of Bothell Defendants (dkt. 56).

1 August 12, 2021

Respectfully submitted,

2
3 **IAN SIMMERS**

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